

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

—X

STEPHEN DRAGO, Individually and as  
Acting Chair and President of  
"Neighborhoods Against Cell Towers"

08 CIV 6356 (SCR)

Plaintiffs,

- against -

JOHN S. GARMENT, Chairman, and STEPHEN  
A. ALLEXANDER, JOHN E. DURANTE,  
CASIMIRO V. CIBELLI, ARNOLD BERNSTEIN,  
MICHAEL F. QUINN, and JOHN IORIS, as  
Members of the Planning Board of the  
City of White Plains; THE CITY OF  
WHITE PLAINS, New York, and METROPCS  
NEW YORK, LLC,

AFFIDAVIT IN  
SUPPORT OF MOTION  
TO DISMISS PLAINTIFFS'  
COMPLAINT PURSUANT TO  
FRCP 12(b)(6)

Defendants.

—X

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF WESTCHESTER            )

Arthur Gutekunst, being duly sworn deposes and says:

1. I am an attorney duly admitted to practice law in the  
State of New York and am admitted to practice before this court. I am  
a Senior Assistant Corporation Counsel for the City of White Plains  
attorneys for defendants' John S. Garment, Chairman, and Stephen A.  
Alexander, John E. Durante, Casimiro V. Cibelli, Arnold Bernstein,  
Michael F. Quinn, and John J. Ioris, as Members of the Planning Board  
of the City of White Plains; the City of White Plains, New York ("the  
City Defendants").

2. This affidavit is respectfully submitted in support of the motion of the City defendants to dismiss Plaintiffs' complaint pursuant to the Federal Rules of Civil Procedure Rule 12(b)(6) for Plaintiffs' failure to state a claim upon which relief can be granted by this Court.

3. In the interest of judicial economy, a copy of the Complaint at issue is annexed to the affidavit of Brian P. Galligan, sworn to September 5, 2008 as Exhibit A which affidavit has been submitted on behalf of the motion of Defendant MetroPCS New York LLC for the same relief in this action.

4. Based upon all the reasons set forth in the accompanying memorandum of law in support of the motion of the City Defendants, it is respectfully requested that this court should grant the motion of the City Defendants to dismiss the Plaintiffs' complaint herein in its entirety and for such other and further relief as this Court deems just and appropriate, including but not limited to the City Defendants legal fees, costs and disbursements herein.



Arthur Gutekunst

Sworn to before me this

5th day of September, 2008



DOREEN L. RICH  
Notary Public, State of New York  
No. 02RI6081196  
Qualified in Westchester County  
Commission Expires September 30, 2008